

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EVAN JOHNSON, JOSH GRAY, AND DYLAN COOK,

Plaintiffs,

V.

HYTECH POWER, LLC, a Washington limited liability company; TOM GIBBONS; THE ESTATE OF S.B. JOSEPH CLARK; CHASE ENGLEHART and MARGARET A. CLARK, Co-Personal Representatives of the ESTATE OF S.B. JOSEPH CLARKE, deceased; CHASE ENGLEHART, individually; and THOMAS GIBBONS, individually and his marital community he has with JANE DOE GIBBONS, his spouse; AVIATION PARTNERS, INC., a Washington corporation; APB WINGLETS COMPANY, LLC, a foreign limited liability company; and AVIATION PARTNERS BOEING WINGLETS II, LLC, a multiple employer group health plan,

Defendants.

CASE NO. 2:20-CV-01676 RAJ

ANSWER TO AMENDED
COMPLAINT AND AFFIRMATIVE
DEFENSES OF CHASE
ENGLEHART, INDIVIDUALLY,
AND AVIATION PARTNERS, INC.

1 Defendants Chase Englehart, in his individual capacity¹ (“Englehart”), and Aviation
 2 Partners, Inc. (“API”), in answer to the allegations in Plaintiffs’ Amended Complaint (Dkt. # 46),
 3 admit, deny and state as follows:

4 **I. PARTIES**

5 1. Admit that Plaintiff Evan Johnson (“Johnson”) was employed by HyTech Power,
 6 LLC (“HyTech”), and that he lived in the State of Washington at least at some time. Englehart and
 7 API lack sufficient information to admit or deny the remaining allegations in paragraph 1 of the
 8 Amended Complaint and therefore deny them.

9 2. Admit that Plaintiff Josh Grey (“Grey”) was employed by HyTech Power, LLC
 10 (“HyTech”) and that he lived in the State of Washington at least at some time. Englehart and API
 11 lack sufficient information to admit or deny the remaining allegations in paragraph 2 of the
 12 Amended Complaint and therefore deny them.

13 3. Admit that Plaintiff Dylan Cook (“Cook”) was employed by HyTech Power, LLC
 14 (“HyTech”) and that he lived in the State of Washington at least at some time. Englehart and API
 15 lack sufficient information to admit or deny the other allegations in paragraph 3 of the Amended
 16 Complaint and therefore deny them.

17 4. Paragraph 4 of the Amended Complaint sets forth legal conclusions, not factual
 18 allegations, for which no response is required.

19 5. Admit that each of the Plaintiffs were an employee of HyTech, which is a
 20 Washington limited liability company, and that as employees they were afforded certain benefits
 21 from HyTech, including being enrolled in a group health insurance plan of Regence BlueShield.
 22 Englehart and API lack sufficient information to admit or deny the other allegations in paragraph
 23 5 of the Amended Complaint and therefore deny them.

24 6. Admit that Thomas (Tom) Gibbons (“Gibbons”) is married and is a resident of King
 25 County, Washington, that Gibbons is, and has been, a duly appointed member of the Board of

26 27 ¹ Chase Englehart is named in the Complaint in two separate capacities: as co-personal representative of the
 Estate of S.B. Joseph Clark, and individually. This Answer and Affirmative Defenses responds to the allegations
 against Englehart in his individual capacity.

HyTech, that he was selected for that position by JC Aviation Investment, Inc. (“JCAI”), and that he became Chairman of the Board of HyTech following the death of S.B. Joseph Clark (“Clark”), who was the Chairman at the time of his death. Englehart and API deny any other allegations in paragraph 6 of the Amended Complaint.

7. Admit.

8. Admit that Englehart is unmarried and is and has been a member of the Board of HyTech, and deny the remaining allegations in paragraph 8 of the Amended Complaint.

9. Admit.

10. Lack sufficient information to admit or deny the factual allegations in paragraph 10 of the Amended Complaint, and therefore deny them.

11. Admit the allegations in the first sentence of paragraph 11 of the Amended Complaint and deny any other allegations in this paragraph.

12. Englehart and API lack sufficient information to admit or deny the allegations in paragraph 12 of the Amended Complaint and therefore deny them.

13. Paragraph 13 of the Amended Complaint sets forth legal conclusions, not factual allegations, for which no response is required.

II. JURISDICTION AND VENUE

14. Paragraph 14 of the Amended Complaint sets forth legal conclusions, not factual allegations, for which no response is required.

15. Deny that there was any “breach.” Paragraph 15 of the Amended Complaint otherwise sets forth legal conclusions, not factual allegations, for which no response is required.

16. Paragraph 16 of the Amended Complaint sets forth legal conclusions, not factual allegations, for which no response is required.

III. BACKGROUND FACTS

17. Admit.

18. Paragraph 18 of the Amended Complaint sets forth legal conclusions, not factual allegations, for which no response is required.

1 19. State the referenced documents speak for themselves and deny any other allegations
2 in paragraph 19 of the Amended Complaint.

3 20. State the referenced documents speak for themselves and deny any other allegations
4 in paragraph 20 of the Amended Complaint.

5 21. State the referenced documents speak for themselves and deny any other allegations
6 in paragraph 21 of the Amended Complaint.

7 22. Admit that HyTech reduced the salary of Johnson from \$20,000 per month to
8 \$10,000 per month and that Johnson knowingly consented and continued to be employed by
9 HyTech for several months after he was informed of this salary reduction, and deny any other
10 allegations in paragraph 22 of the Amended Complaint.

11 23. Deny.

12 24. Paragraph 24 of the Amended Complaint sets forth legal conclusions, not factual
13 allegations, for which no response is required.

14 25. Paragraph 25 of the Amended Complaint sets forth legal conclusions, not factual
15 allegations, for which no response is required.

16 26. Admit.

17 27. Admit that Johnson has submitted a claim against the Estate, which claim speaks
18 for itself, and deny and any other allegations in paragraph 27 of the Amended Complaint.

19 28. Admit.

20 29. Admit the allegations in paragraph 29 of the Amended Complaint.

21 30. Deny the Plan was sponsored by API. Lack sufficient information to admit or deny
22 the remaining allegations in paragraph 30 of the Amended Complaint, and therefore deny them.

23 31. Deny the Plan was administered by API. Lack sufficient information to admit or
24 deny the remaining allegations in paragraph 31 of the Amended Complaint, and therefore deny
25 them.

26 32. Admit that API at certain times had more than 20 employees but not in calendar
27 years 2019 and 2020, and deny any other allegations in paragraph 32 of the Amended Complaint.

33. Deny that API was designated as the sponsor or administrator of the Plan. Lack sufficient information to admit or deny the remaining allegations in paragraph 33 of the Amended Complaint, and therefore deny them.

34. Admit Plaintiffs' employment with HyTech was terminated effective on or before April 30, 2020, and lack information sufficient to admit or deny any other allegations in paragraph 34 of the Amended Complaint and therefore deny them.

35. Admit that one or more of the plaintiffs continued to engage in activities using the property, including intellectual property, of HyTech after being terminated from their employment from HyTech, all without the knowledge or authorization of HyTech or its Board of Directors, and deny any other allegations in paragraph 35 of the Amended Complaint.

36. Lack sufficient information to admit or deny the allegations in paragraph 36 of the Amended Complaint, and therefore deny those allegations.

37. Lack sufficient information to admit or deny the allegations in paragraph 37 of the Amended Complaint, and therefore deny those allegations.

38. Lack sufficient information to admit or deny the allegations in paragraph 38 of the Amended Complaint, and therefore deny those allegations.

39. Lack sufficient information to admit or deny the allegations in paragraph 39 of the Amended Complaint, and therefore deny those allegations.

**FIRST CAUSE OF ACTION:
Johnson's claim for unpaid wages**

40. Englehart and API incorporate their responses to the previous paragraphs of the Amended Complaint.

41. Deny.

42. Deny.

43. Deny.

44. Deny.

SECOND CAUSE OF ACTION:
Wrongful denial of COBRA coverage under 29 U.S.C. §§ 1161 et seq. and 1132.

45. Englehart and API incorporate their responses to the previous paragraphs of the Amended Complaint.

46. Deny.

47. Deny.

48. Deny.

**THIRD CAUSE OF ACTION:
COBRA notice violations (failure to provide notice of continuation benefits) under
29 U.S.C. §§ 1161 et seq. and 1132.**

49. Englehart and API incorporate their responses to the previous paragraphs of the Amended Complaint.

50. Deny.

51. Deny.

52. Deny.

53. Deny.

FOURTH CAUSE OF ACTION:

CAUSE OF ACTION: Attorney fees and costs under ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1)

54. Englehart and API incorporate their responses to the previous paragraphs of the Amended Complaint.

55. Deny.

DAMAGES

56. Englehart and API incorporate their responses to the previous paragraphs of the Amended Complaint.

57. Deny.

58. Deny.

59. Deny.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim for which relief is available to them.

2. Plaintiffs failed to mitigate their claimed damages.

3. The claims of Johnson are barred because he is simultaneously pursuing relief for some of the same alleged causes of action in a pending action in King County Superior Court.

4. At least the claims of Johnson are barred by principles of waiver.

5. At least the claims of Johnson are barred by principles of estoppel.

6. Plaintiffs' claims are barred by their respective own wrong-doing, wrongful acts or omissions, or misrepresentations, whether intentional or negligent, including acts or omissions after the date of the filing of the Complaint.

7. Plaintiffs' claims are barred by the doctrine of unclean hands, including with respect to events after the date of the filing of the Complaint.

8. Plaintiffs' claims are barred by failure to meet conditions precedent.

PRAYER FOR RELIEF

WHEREFORE, Englehart and API request judgment as follows:

1. Dismissal of each of the causes of action with prejudice;
 2. An award of costs of suit and other disbursements incurred by the them;
 3. An award of reasonable attorneys' fees to the extent allowed by law; and
 4. Such other and further relief as the Court deems just and proper.

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Case No. 2:20-CV-01676 RAJ
#1978491 v2 / 74115-008

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1 Dated this 8th day of June 2021.

2 KARR TUTTLE CAMPBELL
3 *Attorneys for Defendants Chase Englehart,
4 Individually, and Aviation Partners, Inc.*

5 s/ Mark A. Bailey

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CERTIFICATE OF SERVICE

I, Sherelyn Anderson, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to the within action. My business address is: 701 Fifth Avenue, Suite 3300, Seattle, Washington 98101. On this day, I caused to be filed a true and correct copy of the foregoing by using the Court's electronic filing system. I caused the same to be served on the party listed below in the manner indicated.

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I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge. Dated this 8th day of June 2021 at Seattle, Washington.

/s/ Sherelyn Anderson
Sherelyn Anderson
Litigation Legal Assistant

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